United Nations CED/C/SR.241

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
29 May 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 241st meeting
Held at the Palais Wilson, Geneva, on Wednesday, 23 May 2018, at 3 p.m.

Chair: Mr. Huhle (Vice-Chair)

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Austria

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08370 (E) 280518 290518

1808370

Please recycle

Mr. Huhle (Vice-Chair) took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Austria (CED/C/AUT/1; CED/C/AUT/Q/1 and CED/C/AUT/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Austria took places at the Committee table.*

2. **Mr. Tichy** (Austria), introducing his country's initial report (CED/C/AUT/1), said that, for Austria, cooperation with the Committee was not just an obligation under the Convention but also an act of solidarity with victims and their families and an expression of the country's commitment to combating enforced disappearances. Austrian history had shown how quickly a regime lacking respect for human rights could take control of a society and how important, thus, were structural international safeguards against all kinds of human rights violations. The initial report was the fruit of several rounds of consultations with numerous stakeholders, including government entities and civil society.

3. His country had a well-defined body of law giving effect to the provisions of the Convention. After the Convention's entry into force, the Criminal Code had been amended to include, among other changes, a new section 312 (b) introducing the offence of "enforced disappearance of a person". Under that section, any person who deprived another person of the latter's personal liberty on behalf of or with the acquiescence of a state or a political organization and concealed the fate or whereabouts of the missing person was subject to imprisonment for between 1 and 10 years and, in the case of abuse of official authority, up to 15 years. One investigation had already been carried out under the new provision, in connection with an alleged attempt to perpetrate an enforced disappearance in Syria. Another new section, 321 (a), classified enforced disappearances engineered as part of a widespread or systematic attack against a civilian population as crimes against humanity.

4. Austria had comprehensive mechanisms and procedures for monitoring the compliance of federal and regional government entities with the country's human rights obligations and standards. The three-member Austrian Ombudsman Board, elected by Parliament, served as the national human rights institution and, together with its six regional expert commissions, as the oversight mechanisms required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities. The Government's work programme for the period 2017–2022 included the establishment of a similar independent oversight mechanism relating to police powers. A study by the University of Vienna on allegations of ill-treatment by law enforcement officers was expected to be finalized shortly. On the basis of its outcome, the regulations of the federal ministries of justice and the interior governing ill-treatment by law enforcement officers would be amended.

5. Under the new arrangements for data protection that would come into effect on 25 May 2018, every State agency would have to appoint a data protection officer tasked with ensuring compliance with the standards and safeguards of the European Union's General Data Protection Regulation. The competence of the national data protection authority had also been broadened.

6. In the autumn of 2015, Austria had been confronted with an unprecedented influx of refugees and migrants. Many of those arriving had belonged to vulnerable groups, such as unaccompanied minors. The Government, with the support of Austrian aid organizations and civil-society volunteers, had done its best to provide humanitarian help while complying with the country's obligations under refugee and human rights law. Nevertheless, the sheer number of people, including many without travel documents, had made it difficult to identify individuals and to keep track of their whereabouts after registration. Unaccompanied minors posed a particular challenge in that regard — a challenge that the authorities took very seriously. In 2017, the United Nations Children's Fund had organized

training on child protection and children's rights for all executive bodies of the care institutions run by the Federal Ministry of the Interior to raise awareness of the need to accord special protection to unaccompanied minors seeking asylum.

7. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that he would welcome more information on how civil-society actors had participated in the preparation of the report. He requested clarification of the statement in paragraph 2 of the replies to the list of issues (CED/C/AUT/Q/1/Add.1) that the Convention had the status of a law in Austria and was directly applicable insofar as its provisions were sufficiently precise, and specifically as to whether the Convention truly took precedence over national legislation. He asked whether the Ombudsman Board complied with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and, if not, what measures were planned to remedy the situation.

8. The Committee would appreciate clarifications concerning paragraph 10 of the replies to the list of issues, which stated that there was no express prohibition against invoking a state of necessity or a public emergency to justify any violation of or restrictions on human rights and freedoms. He wondered whether legislation or practices put in place to counter terrorism had influenced the application of the Convention.

9. He would welcome information on the omission from section 312 (b) of the Criminal Code of refusals to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of a disappeared person. Were such acts, when committed by agents of the State, covered elsewhere in Austrian law? He also wished to know if political organizations were covered by the provisions of section 312 (b) of the Criminal Code. Some of the penalties outlined in the Criminal Code for offences relating to enforced disappearance did not seem to match the gravity of the crimes in question. He wondered to what extent they were in keeping with article 7 (1) of the Convention.

10. **Ms. Janina** (Country Rapporteur) asked how Austrian law determined whether a continuous crime of enforced disappearance had ended. Did the law include a legal definition of a continuous crime? She would appreciate examples of crimes that would be considered continuous under national legislation. The 10-year statute of limitation for crimes of enforced disappearance seemed insufficient. The Committee noted that it could be extended under certain circumstances and would welcome mention of examples of such circumstances.

11. She asked the delegation to clarify the information in paragraph 60 of the report about jurisdiction in cases of enforced disappearance where Austrian interests other than the Austrian nationality of the offender or the victim were infringed, and in cases where the offender was a foreign citizen but had his or her common residence in Austria. Was the principle of no requirement of double criminality applied to all types of crimes and could Austria exercise jurisdiction in cases where a foreign citizen residing in Austria had committed a crime of enforced disappearance?

12. The Committee would also be grateful for further details about the investigation that had been launched into an alleged attempt to perpetrate an enforced disappearance in Syria, including the facts of the case and the authority responsible for conducting the investigation. It would appreciate information about the procedure and functioning of the European Arrest Warrant and cooperation between member States of the European Union in relation to alleged crimes of enforced disappearance.

13. In its replies to the list of issues, the State party had provided comprehensive information on the protection of witnesses; she was curious to know whether the same protection was afforded to the relatives of victims of enforced disappearance, who themselves were victims under article 24 of the Convention. What was the legal position of individuals who approached the authorities to report the disappearance of a family member?

14. The Committee noted that the Code of Criminal Procedure contained several provisions that dealt with conflicts of interest in the context of investigations, notably section 47 on the impartiality of the criminal investigation department and the public prosecutor's office. While recognizing that persons in authority were expected to abstain voluntarily from participating in investigations in the event of a perceived conflict of

interest, she wished to know who was responsible for preventing conflicts of interest in the event that the official in question did not abstain. Did the obligation to abstain apply only to individuals, or did it extend to entire units or structures within the competent authority? The delegation might also provide general information on the study by the University of Vienna on allegations of ill-treatment by law enforcement officers, including the number of claimants, the number of people accused of ill-treatment and the outcomes of the claims.

15. She would be grateful for an explanation of what was meant in Austrian legislation by the term "extradition asylum". Moreover, considering that paragraph 78 of the initial report stated that the offence of enforced disappearance was "in conformity with all relevant multilateral conventions [...] and all of Austria's bilateral extradition treaties, including with Australia, Canada and the United States", she wondered whether the State party treated enforced disappearance as an extraditable crime even with countries that were not party to the Convention. Similarly, given that mutual legal assistance was regarded as possible on the basis of domestic law, even in the absence of a bilateral treaty, provided that the foreign authority was ready to reciprocate in comparable cases, she asked what kind of crimes might be deemed comparable in the event that the State party was asked to provide assistance in a case of enforced disappearance.

16. **Mr. Decaux** said that he wished to know whether the case of alleged attempted enforced disappearance in Syria was being investigated as a crime against humanity under article 5 of the Convention, or as a crime committed by State or non-State actors, as envisaged under articles 2 and 3, respectively.

17. **Mr. Teraya**, noting that the Convention had the status of a law and that ordinances issued in the context of emergency measures must not be in conflict with the Federal Constitution, said that he would like to know more about the domestic legal hierarchy and whether a conflict might arise between the Convention and the Federal Constitution. He also wished to know how the State party ensured respect for human rights in the event of a state of necessity or a public emergency.

18. **Mr. Baati** said that he would appreciate an explanation of the three-day delay between the publication of the Federal Law Gazette and the entry into force of the Convention, considering that laws usually entered into force automatically upon publication. He asked how the State party reconciled the independence of the Austrian Ombudsman Board and the selection of its members by political parties. He also wished to know whether the reference to "political organizations", which had been added to section 312 (b) of the Criminal Code, included political parties. In respect of the new provisions on data protection, he would like to know whether the Ombudsman Board or another authority was in charge of overseeing compliance with personal data protection legislation. Lastly, he wondered whether the admissibility criteria that were considered when responding to extradition requests included the risk that the individual might be subjected to inhuman treatment in the requesting country.

19. **Ms. Galvis Patiño** asked whether any discussions had arisen in the State party in respect of provisions of the Convention that were not deemed precise enough to be directly applicable.

The meeting was suspended at 3.55 p.m. and resumed at 4.15 p.m.

20. **Mr. Tichy** (Austria) said that government ministries and agencies cooperated closely with non-governmental organizations (NGOs), participated in meetings and working groups with them and received their requests and demands. The Government also held an annual event for human rights NGOs at which issues of practical relevance were discussed. Austrian NGOs had been informed about the preparation of the initial report and the review of the State party before the Committee; however, enforced disappearance was not a major focus of concern in Austria and so their contribution to the process had been limited.

21. In the Austrian legal order, international treaties ratified by Parliament had the same status as laws but did not prevail over them. Although it was therefore possible that a law might come into conflict with a law of equal status giving effect to an international treaty obligation, that had not yet happened in relation to the Convention, and the Federal

Ministry for Europe, Integration and Foreign Affairs took steps to prevent such situations occurring. Concerning the statement that the Convention was directly applicable and self-executing "insofar as its provisions were sufficiently precise", the tradition in Austria was that criminal provisions — even precise ones — contained in treaties were not applied directly but were rephrased and inserted into the Criminal Code. For example, the Government had drafted the new section 312 (b) of the Criminal Code, which covered the provisions of articles 2 and 3 of the Convention, obviating any need for their direct application. In the past, the Government had considered that existing domestic criminal law provisions were sufficient to meet its international treaty obligations; for example, provisions on murder and manslaughter were used to deal with war crimes. However, more recently, it had decided that it was preferable to include in the Criminal Code specific new provisions derived from different sources of international law, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court.

22. The political dimension of the selection of the members of the Ombudsman Board, the reason for its B status under the Paris Principles, had originally been instituted to ensure representation of a third, minority, political party. Under the Constitution, the three members of the Board were nominated by the three main political parties and subsequently elected by Parliament. However, the Board had demonstrated its independence in the 40 years since its establishment: the members always acted with full independence and were extremely demanding in their requirements of the authorities being monitored.

23. As to the adoption of emergency measures, although the Federal President had the power to do so in certain circumstances, such an event had never occurred. In any case, a number of safeguards were in place to ensure that the human rights enshrined in the Constitution could not be suspended or restricted. Terrorism had not affected Austria as seriously as some other European countries and those cases that had occurred had been addressed under ordinary criminal laws.

24. The definition of enforced disappearance under section 312 (b) of the Criminal Code differed from that provided in article 2 of the Convention in the inclusion of "political organizations" and the exclusion of "refusal to acknowledge the deprivation of liberty". The inclusion of the concept of "political organizations" was intended to broaden the provision on enforced disappearances in a way that took account of article 3 of the Convention, on the understanding that "political organizations" were entities that exercised de facto governmental authority, without necessarily being State actors.

25. **Ms. Pampalk-Lorbeer** (Austria) said that the reason for the omission from section 312 (b) of the Criminal Code of an explicit reference to the "refusal to acknowledge the deprivation of liberty" was the perceived inconsistency of such a reference with the constitutional right not to be compelled to testify against oneself. However, the overall effect of the omission was to broaden the scope of the Austrian definition of enforced disappearance, as fewer elements had to be proved in order to establish the guilt of a perpetrator.

26. The ordinary offence of enforced disappearance carried a penalty of 1 to 10 years' imprisonment, but the maximum penalty was increased to 15 years for public officials who committed the offence through abuse of office. Perpetrators of crimes of enforced disappearance who intentionally caused the death of the victim were prosecuted for the offence of murder, which carried a penalty of 10 to 20 years' imprisonment or life imprisonment. In the event that an act of enforced disappearance constituted a crime against humanity, the applicable penalties were 5 to 15 years' imprisonment, 10 to 20 years' imprisonment if death was caused through negligence or life imprisonment if death was caused intentionally. While it was theoretically possible for a judge to impose the minimum penalty of 5 years' imprisonment on the perpetrator of an act of enforced disappearance that constituted a crime against humanity, it was highly unlikely that would ever happen, as the judge would be required to take into account any mitigating and aggravating circumstances.

27. The term of limitation for a given offence was linked to its maximum applicable penalty and did not commence until the objective elements of the offence had ceased. In that regard, the offence of enforced disappearance was comparable to the offence of

deprivation of liberty, established in section 99 of the Criminal Code, as they were both continuous in nature. The term of limitation was suspended in certain circumstances. For example, if the victim was a minor, the term of limitation did not commence until he or she had reached the age of 28 years. The term of limitation was also suspended in the event that criminal action was taken against the perpetrator. There was no term of limitation for crimes against humanity.

28. With regard to acts of enforced disappearance committed outside the territory of Austria, section 64 of the Criminal Code empowered the State to exercise jurisdiction in cases in which either the perpetrator or the victim of the crime was an Austrian national, other Austrian interests had been infringed or the perpetrator resided in Austria and could not be extradited. The principle of double criminality did not apply to the offences specified in section 64. Section 65 also empowered the State to exercise jurisdiction with respect to crimes committed in another State, but only if they constituted offences under the laws of that State. In late 2017, an investigation had been opened in connection with an allegation of attempted enforced disappearance in Iraq, not Syria as had earlier been stated, in 2015. The case had fallen under Austrian jurisdiction because both the alleged perpetrator and the alleged victim had been residing in Austria. It had ultimately been closed for lack of evidence.

29. The Code of Criminal Procedure set out the circumstances in which family members could be considered victims of an offence. The family members of a disappeared person whose death had not been confirmed were considered victims and enjoyed all associated rights. The rights of victims had recently been strengthened in Austria.

30. Members of the criminal police and prosecutors were required to withdraw from cases in which their independence was compromised. Persons whose rights had been infringed in the course of proceedings were entitled to remedies. Victims could request the resumption of proceedings that had been suspended. Judges were required to recuse themselves from cases in which their independence was compromised, and failure to do so would nullify any judgment issued. The rules governing the independence of the criminal justice system were applied very strictly, but their application in a particular case would depend on its precise circumstances.

31. **Ms. Walser** (Austria) said that the data protection officers to be appointed by every government agency before 25 May 2018 would be responsible for ensuring the implementation of data protection regulations, in particular the General Data Protection Regulation. Although they were public officials, they enjoyed full independence in the performance of their duties and had access to all information necessary to evaluate the compliance of their agency with data protection regulations. However, their role was an advisory one and they could not impose sanctions. Data protection officers had already been appointed for three branches of the justice system. Persons whose data had been leaked or improperly used were entitled to bring a case before the independent Austrian Data Protection Authority, which had the power to issue a warning or an official order with which the government agency concerned would be required to comply. In some cases, criminal proceedings could be brought under sections 302 and 310 of the Criminal Code. The applicable penalties varied in accordance with the severity of the offence, the maximum being 5 years' imprisonment. Investigations had been opened in 10 recent cases, and a fine of €5,000 had been imposed in one case.

32. **Mr. Tichy** (Austria) said that international instruments were promulgated in the Federal Law Gazette once the minimum number of ratifications required for their objective entry into force had been reached. If the date of an instrument's entry into force for Austria was not specified in the Gazette, it would automatically be the day after its promulgation. The Convention had been promulgated in the Federal Law Gazette on 4 July 2012. It had been specified that, as the relevant instrument of ratification had been deposited on 7 June 2012, the Convention would enter into force 30 days later, on 7 July 2012, in accordance with its article 39 (2). The same procedure had been followed for the implementing legislation promulgated in connection with the entry into force of the General Data Protection Regulation on 25 May 2018.

33. **Mr. Figallo Rivadeneyra** said that, while it was vital that international obligations related to criminal matters should be incorporated into national law, it would also be interesting to learn whether any of the other provisions of the Convention could be directly invoked. With regard to the compliance of the Ombudsman Board with the Paris Principles, it was problematic that some of the Board's members not only were proposed by political parties, but also were members of political parties. The Paris Principles also had a preventive role to play in terms of the protection of human rights.

34. Although the emergency measures provided for in the Constitution had never been invoked, he wondered what was being done to ensure the full compliance of national legislation with article 1 (2) of the Convention, which stipulated that no exceptional circumstances whatsoever could be invoked as a justification for enforced disappearance.

35. In practice, the omission of explicit reference to the "refusal to acknowledge the deprivation of liberty" from the definition of enforced disappearance contained in section 312 (b) of the Criminal Code would weaken its provisions, as it would prevent public officials who refused to acknowledge the deprivation of liberty of a disappeared person from being held to account. Lastly, it would be helpful if the delegation could provide more information on the position of the criminal investigation department in the institutional hierarchy and the nature of its involvement in the investigation of cases of enforced disappearance.

36. **Ms. Janina** said that she would appreciate clarification regarding the power of judges to invoke the Convention and other international instruments. Although crimes of enforced disappearance were rare in the State party, many of the specific articles of the Convention, particularly those relating to extradition, could be usefully invoked in other contexts. The independence of the Ombudsman Board was threatened not only by the procedure for electing its members, but also by the scope of its functions. In that connection, she wondered how the Ombudsman Board gathered follow-up information on the implementation of its recommendations and what force its recommendations had.

37. It would be helpful if the delegation could provide further clarification regarding section 313 of the Criminal Code, pursuant to which the maximum penalty for the offence of enforced disappearance could be increased if it was committed with intent by a public official. It was unclear in what circumstances a judge would be able to establish the intent of a public official and thus impose the increased maximum penalty.

38. The Convention stipulated that States parties were entitled to establish mitigating and aggravating circumstances for crimes of enforced disappearance, but it was made clear that such circumstances should be specific. She wondered whether consideration had been given to the possibility of doing so for the offence of enforced disappearance or whether analogous provisions that were already in force could be invoked in that context. In addition, it would be helpful if the delegation could explain the concept of a "continuous" offence.

39. She would appreciate clarification regarding the State party's exercise of jurisdiction with respect to crimes of enforced disappearance committed outside its territory. It would also be helpful to receive more detailed information on the investigation that had been opened in connection with the allegation of an attempted enforced disappearance in Iraq, including which body had instigated the investigation and whether it had been opened ex officio or in response to a complaint from the victim. It was unclear whether the investigation had been closed because it had not been possible to establish that the offence of enforced disappearance had been committed or because the fact that the offence had been committed outside the State party's territory had hampered the investigation. In the latter case, she wondered whether the State party had submitted a request to Iraq for mutual legal assistance, as that State, too, was a party to the Convention. Had the victim lodged a complaint regarding the conduct of the investigation, been kept informed throughout the process and had any opportunity to appeal the outcome?

40. Lastly, she would be grateful for a response to her request for information on cases in which officials involved in conducting investigations had resorted to intimidation or in which their impartiality had been compromised and the measures that had been taken in response. Relevant statistics would be particularly helpful in that regard.

41. **Mr. Ayat** said he would appreciate clarification on how the State party considered that including "refusal to acknowledge the deprivation of liberty" or "concealment of the fate or whereabouts of the disappeared person" in the definition of enforced disappearance in article 312 (b) of the Criminal Code might conflict with the right of persons to remain silent.

42. **Mr. Decaux** said that he would be interested to hear whether the Ombudsman Board had contributed in any way to the reporting process. He hoped the delegation could provide more information about the competence and functions of the Board. Did it, like other national human rights institutions, act as an interface between the national and international aspects of human rights questions?

43. **Mr. Teraya** said that he would appreciate specific examples of instances in which judicial bodies had recognized a provision of an international treaty to be self-executing.

44. **The Chair** said that the State party's concern that incorporating the full definition of enforced disappearance, as enshrined in article 2 of the Convention, into domestic law might conflict with the right of persons to remain silent and lead them into self-incrimination, seemed to be based on a misunderstanding. The provisions in article 2 referring to "refusal to acknowledge the deprivation of liberty" and "concealment of the fate or whereabouts" were clearly intended to be applied in the immediate aftermath of a disappearance when the relatives of a missing person turned to the authorities for information about their loved ones and were met with denial.

45. **Mr. Tichy** (Austria) said that it was up to the courts to interpret international treaties, including the Convention, and to determine which provisions were self-executing and directly applicable without implementing legislation. For example, article 1 (2) of the Convention could be directly invoked and no court would ever accept that there were exceptional circumstances that could justify enforced disappearance. Similarly, article 13 of the Convention, which stated that enforced disappearance could not be regarded as a political offence, could be directly applied by the courts in the context of the Extradition and Mutual Assistance Act, according to which extradition was inadmissible for political offences.

46. Recommendations of treaty bodies were taken very seriously. They were examined at government level and then widely distributed for discussion with NGOs. The recommendation to establish a national human rights institution in accordance with the Paris Principles was usually met with the response that such an institution already existed: the Austrian Ombudsman Board. It remained a category B institution, but its statutes could only be changed by amending the Constitution and that, in turn, would require a parliamentary majority that no government seemed likely to achieve in the near future. Members of the Ombudsman Board, like all Austrian citizens, had the right to belong to a political party, but that did not mean that they were unable to fulfil their duties independently and impartially. The Ombudsman Board was very active internationally, particularly in South-Eastern Europe. Often, a member of the Board was also Secretary-General of the International Ombudsman Institute, which had its headquarters in Vienna.

47. **Mr. Ruscher** (Austria) said that, if the impartiality of an official could be called into question because of his or her personal involvement, or that of a family member, in a case, that official had to step aside. Any violation of that obligation could render the official in question liable to a charge of abuse of power. Normally, when prosecutors pursued cases against law enforcement officials, police from a different province would be charged with undertaking the investigation. Witnesses or other persons requiring protection could be kept under police surveillance when there was a suspicion that their life, health or liberty might be in peril. The measures taken depended on the degree of danger the person was considered to be facing, but could go as far as providing a new identity. In any case, any measures were taken only in consultation with the person concerned, who had the right to refuse protection.

48. Non-refoulement was regulated under the Asylum Act, which, in line with the 1951 Convention relating to the Status of Refugees, stated that no one could be extradited or returned to a country where they might face danger. Moreover, the Constitutional Court had the right to intervene in non-refoulement cases because the European Convention for the

Protection of Human Rights and Fundamental Freedoms had the same status as the Constitution, and its article 3 expressly prohibited torture or inhuman or degrading treatment or punishment.

49. **Ms. Pampalk-Lorbeer** (Austria) said that the definition of enforced disappearance in the Criminal Code was close, although not identical, to that given in the Convention. The omission of "refusal to acknowledge" as a constituent element did not reduce protection for victims but it did make the offence easier to prosecute. She took note of the view that article 2 of the Convention was intended to be applied in the immediate response to a disappearance; however, Austria had strict provisions regulating the right to remain silent and avoid self-incrimination, irrespective of whether that occurred in the immediate aftermath of an offence or later.

50. With regard to the continuous nature of enforced disappearance, the domestic legal order categorized offences either by outcome, such as murder, or by conduct, such as unlawful deprivation of liberty, which was contemplated under section 99 of the Criminal Code. Although there was no jurisprudence on enforced disappearance under section 312 (b) of the Code, there was a considerable body of jurisprudence on section 99, which made it clear that, as long as a certain conduct persisted, an offence was deemed to exist.

51. In certain cases, the condition of double criminality did not have to be fulfilled and, once the Austrian authorities had determined that they had jurisdiction over a particular criminal case, it would be pursued under domestic legislation in accordance with the Code of Criminal Procedure. Under section 313 of the Criminal Code, when a criminal offence was perpetrated by a State official who abused his or her position to commit the offence, the penalty could be increased by 50 per cent. For example, in a case of enforced disappearance, the maximum sentence of 10 years could be increased to 15 years. In determining the exact sentence, judges had to abide by certain strict parameters such as the impact and damage caused by the crime and the attitude of the perpetrator before the law. They also had to take due account of aggravating factors — such as the particular vulnerability of the victim — and mitigating factors — such as an effort on the part of a perpetrator to make good the damage caused.

The meeting rose at 5.50 p.m.